LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
OCT 2 1962
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1962

No. 477

CITY OF PHILADELPHIA,

Petitioner,

against

RALPH COHEN,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

MORTIMER B. WOLF
20 Vesey Street
New York 7, N. Y.

DAVID BERGER
City Solicitor,
City of Philadelphia
703 City Hall Annex
Philadelphia 7, Pa.

Counsel for Petitioner

INDEX

	PAGE.
Opinions Below	2
Jurisdiction	2
Questions Presented	2
Constitutional and Statutory Provisions Involved	3
Statement	3
Reasons for Granting the Writ	5
Conclusion	12
Appendix A—Constitutional and Statutory Provisions	App. 1
Appendix B—Judgment of the Court of Appeals of New York	App. 2
Appendix C—Majority and Dissenting Opinions of the Court of Appeals of New York	App. 5

TABLE OF AUTHORITIES

Cases:

Addison Case, 385 Pa. 48, 122 A. 2d 72 (1956)	9
Broderick v. Rosner, 294 U. S. 629	6, 10, 11

PAGE

City of New York v. Shapiro, 129 F. Supp. 149 (D. Mass. 1954) 7
Converse v. Hamilton, 224 U. S. 243 10

First National Bank v. United Air Lines, 342 U. S. 396 10

Hughes v. Fetter, 341 U. S. 609 9, 10, 11

Magnolia Petroleum Co. v. Hunt, 320 U. S. 430 7
Milwaukee County v. White Co., 296 U. S. 268 6, 9, 10

Philadelphia v. Eglin's Garage, 342 Pa. 142, 19 A. 2d 845 (1941) 9
Philadelphia v. Sam Bobman Dept. Store Co., 189 Pa. Super. 72 (1959) 6
Philadelphia v. Samuels, 338 Pa. 321, 12 A. 2d 79 (1940) 9

Constitutional and Statutory Provisions:

Constitution of the United States, Art. IV, Sec. 1 5, 9

28 U. S. C. 1257(3) 2

28 U. S. C. 1738 3, 6

IN THE

Supreme Court of the United States

October Term, 1962

No.

CITY OF PHILADELPHIA,

Petitioner,

against

RALPH COHEN,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

Petitioner respectfully prays that a writ of certiorari issue to review the judgment of the Court of Appeals of the State of New York entered in the above-entitled case on July 6, 1962, affirming a judgment dismissing the complaint.

Opinions Below

The majority opinion of the Court of Appeals and the dissenting opinion of Judge Fuld (Appendix C, *infra*, pp. App. 5-11) are reported in 11 N. Y. 2d 401, 184 N. E. 2d 167. The majority of the Appellate Division, First Department rendered no opinion; the minority opinion (R. 46-52) is reported in 15 App. Div. 2d 464, 222 N. Y. S. 2d 226. The opinion of the Supreme Court, New York County (R. 38-39) is not reported.

Jurisdiction

The judgment of the Court of Appeals (R. 2A-2D; Appendix B, *infra*, pp. App. 2-4) was dated and entered on July 6, 1962. The jurisdiction of this Court is invoked under 28 U. S. C. §1257(3).

Questions Presented

1. Where a binding and conclusive administrative determination of liability for business taxes has been reached in accordance with due process of law against a then resident of Pennsylvania who was operating a business there, which determination is *res judicata* and incontestable in the courts of Pennsylvania, and respondent moved to New York before judgment could be entered in Pennsylvania, does the Full Faith and Credit Clause of the Federal Constitution require the courts of New York to accord to the administrative determination "the same full faith and

credit * * * as [it has] by law or usage in the courts of such State * * * from which [it is] taken.'"*

2. Even in the absence of a conclusive administrative determination of tax liability, may the courts of a state, consistently with full faith and credit requirements of the Constitution and laws of the United States, close their doors to a suit to collect moneys due and owing under the revenue laws of a sister state, for the sole reason that the claim is one for taxes rather than to enforce another kind of liability.

Constitutional and Statutory Provisions Involved

The pertinent provisions of the Constitution and statutes of the United States are set forth in Appendix A, *infra*, p. App. 1.

Statement

This is an action to recover gross receipts taxes which respondent failed to pay to the City of Philadelphia, a municipality of the State of Pennsylvania. The taxes were assessed in accordance with applicable municipal ordinances (R. 17-37) and after examination and audit, at a time when respondent was a resident of the City of Philadelphia and engaged in business there as a public parking lot operator (R. 12-14). No contention going to the validity or propriety of the assessment was raised below.

Although he was duly notified of the assessment, as the ordinance required, respondent filed no petition to review,

* 28 U. S. C. §1738, Appendix A, *infra*, p. App. 1.

as permitted by the Tax Review Board Ordinance (R. 14, 21-27). Thereupon, under Pennsylvania law, the assessment became binding and conclusive and respondent's liability for the amount assessed became *res judicata* (*infra*, p. 6). Before judgment could be entered, however, respondent left Pennsylvania and became a resident of New York (R. 12). It was no longer possible to effect service upon respondent within Pennsylvania.

Petitioner took recourse, therefore, to the courts of the only state in which it was practicable to obtain personal jurisdiction over respondent; it commenced this action in the Supreme Court of the State of New York (R. 12-16). Respondent moved to dismiss the complaint upon the ground that New York courts lacked jurisdiction over the subject of an action to collect moneys payable under foreign revenue laws (R. 11). In opposing the motion, and upon appeals to the Appellate Division, First Department and to the Court of Appeals from a judgment dismissing the complaint, petitioner urged in its memoranda and briefs that under the Constitution and laws of the United States both the assessment and the public act of Pennsylvania under which it was made were entitled to the same full faith and credit in the courts of New York as they had by law in the courts of "the State * * * from which they are taken."

The Supreme Court dismissed the complaint on comity grounds (R. 38-39). A majority of the Appellate Division affirmed without opinion (R. 44-52). Both the majority and minority opinions of the Court of Appeals expressly passed upon the full faith and credit point and recognized that the problem involved questions of first impression

expressly left open by this Court (Appendix C, *infra*, pp. App. 5-11). The majority concluded that New York was not required to entertain the suit (*ibid.*, App. p. 8). Judge Fuld, dissenting, held that a final and binding administrative determination of tax liability did not differ from a judgment for full faith and credit purposes and was either a "public Act" or a "Record" within the meaning of Article IV, Section 1 of the Constitution (*ibid.*, pp. App. 10-11).

Reasons for Granting the Writ

1. The decision below is in basic conflict with the rationale of pertinent decisions of this Court and presents vital questions which have not been, but should be, decided by this Court. Those questions are of great importance to thousands of taxing authorities throughout the United States (*infra*, pp. 9, 11).

Administrative determinations which validly adjudicate tax liabilities in one state with incontestable finality should be entitled to equal weight in every state of the Union. They should not be subject to practical nullification at the whim of a court sitting in another state which has competence to enforce them but regards them as "penal" in nature or otherwise engages in thinking inconsistent with modern tax structures and necessities of government.

This case does not involve merely the question whether one state must enforce the revenue laws of another. The New York courts were not requested or required to engage in a "scrutiny of [Philadelphia's] revenue laws or of relations established by those laws with its citizens."

Milwaukee County v. *White Co.*, 296 U. S. 268, 276-278. Nor were those courts asked "to sit in judgment on a tax controversy between another State and its present or former citizens * * *" (Appendix C, *infra*, p. App. 8).

Under Pennsylvania law, the administrative assessment became a final and unchallengeable adjudication of petitioner's liability when he failed to exercise his right to appeal. *Philadelphia* v. *Sam Bobman Dept. Store Co.*, 189 Pa. Super. 72 (1959). Thereafter, judicial enforcement of the assessment in the Pennsylvania courts would require no scrutiny of any revenue laws; there was, in fact, no longer any "tax controversy" since petitioner's liability for a sum certain was *res judicata*. In the words of the dissenting opinion below, the determination had, "in essence, the same force and effect as a judgment." (Appendix C, *infra*, p. App. 10).

Administrative determinations of this nature are entitled to full faith and credit under the rationale of *Milwaukee County* v. *White Co.*, *supra*. While it may not be a "Judicial Proceeding", the final determination here involved is certainly a "public Act" or "Record" of the State of Pennsylvania and it, and others like it, are entitled to receive "the same full faith and credit in every court within the United States * * * as they have by law or usage in the courts of such State * * * from which they are taken". 28 U. S. C. §1738.

In *Broderick* v. *Rosner*, 294 U. S. 629, the New York Superintendent of Banks brought an action in New Jersey to recover unpaid assessments from stockholders of a New York bank who were residents of New Jersey. Conditions

precedent to suit imposed by a statute of the forum state in effect barred the action. This Court rejected an argument identical with that accepted by the court below in the case at bar, namely, that full faith and credit requirements did not apply because the out-of-state assessment was not reduced to judgment. The Court said (294 U. S. at 644):

> "The fact that the assessment here in question was made under statutory direction by an administrative officer does not preclude the application of the full faith and credit clause."

Workmen's compensation awards, likewise administrative in nature, have also been held entitled to the same full faith and credit in every court sitting within the United States as they have by law or usage in the courts of the states from which they are taken. *Magnolia Petroleum Co.* v. *Hunt*, 320 U. S. 430.

The precise question involved in the instant case was decided by Judge Wyzanski in *City of New York* v. *Shapiro*, 129 F. Supp. 149 (D. Mass. 1954). There an administrative determination of tax liability by the treasurer of New York City was held entitled to full faith and credit by reason of its finality. The court pointed out that the taxpayer had not availed himself of the judicial review provided by the New York Civil Practice Act. Since the administrative determination was not subject to further challenge, it had become "a final, binding and new obligation" which was *res judicata* and the original tax obligation had "merged in the obligation expressed in the determination" (129 F. Supp. at 153). The court said (*ibid.* at 154):

"* * * administrative determinations, if they create in their home state new obligations, and if those new obligations are enforceable by independent suit or by process equally effective, can be sued upon in a sister state. See R. H. Jackson, Full Faith and Credit—The Lawyer's Clause of the Constitution, XLV Col. L. Rev. 1, 15.

"Nor can it be justly said that there is some reason of policy for distinguishing between a State's duty to give effect to a sister State's court judgment for taxes and its duty to give effect to a sister State's binding administrative determination of taxes. Every consideration recited by Mr. Justice Stone, 296 U. S. at pages 276-277 of the *Milwaukee County* case applies equally to suits on judgments and suits on determinations."

The principles here involved transcend in importance the question whether one state may, by closing the doors of its courts, offer a haven to one who has been finally adjudicated to be liable for taxes to another state and thus confer "immunity" upon a "tax evader" (R. 52), although that aspect of the matter is in itself of grave importance to taxing authorities throughout the nation. If the decision below is sound, final and binding determinations by a variety of established administrative agencies may be subject to evasion by the mere act of fleeing the jurisdiction if competent courts that sit in the state of asylum do not care to enforce the type of liability involved. The decision below is entirely contrary to

"* * * the strong unifying principle embodied in the Full Faith and Credit Clause looking toward maximum enforcement in each state of the obligations or

rights created or recognized by the statutes of sister states * * *." *Hughes* v. *Fetter*, 341 U. S. 609, 612.

2. If this action be viewed as a claim under a Pennsylvania statute, rather than as a suit to enforce the tax assessment *qua* assessment, the decision below is still erroneous and raises significant questions which this Court should resolve. The court below decided in the negative the question expressly left open in *Milwaukee County* v. *White Co., supra*, 296 U. S. at 275, whether a state is required by the Full Faith and Credit Clause to entertain actions to enforce the revenue laws of another state. This negative answer is a serious detriment to the thousands of taxing authorities which, in the discharge of the indispensable duties of government in this country, constantly suffer large losses of needed revenues payable by departing residents who do not hesitate to throw the burden of their delinquency upon their former neighbors. This Court should speak with finality on this open, and recurring, question of extensive public importance.

The municipal tax ordinance here involved is clearly a "public Act" within the meaning of Article IV, Section I of the Constitution. It was enacted by the City of Philadelphia pursuant to express authorization by the Pennsylvania legislature. *Addison Case*, 385 Pa. 48, 122 A. 2d 72 (1956); see Appendix C, *infra*, p. App. 8. The ordinance is a valid exercise of the state taxing power by its creature, the City of Philadelphia. *Philadelphia* v. *Samuels*, 338 Pa. 321, 12 A. 2d 79 (1940); *Philadelphia* v. *Eglin's Garage*, 342 Pa. 142, 19 A. 2d 845 (1941).

Each state has a "constitutional obligation to enforce the rights and duties validly created under the laws of

other states * * *." *Hughes* v. *Fetter*, 341 U. S. 609, 611; *First National Bank* v. *United Air Lines*, 342 U. S. 396. Whether "the simple device of removing jurisdiction from courts otherwise competent" (*Hughes* v. *Fetter*, *supra*, 341 U. S. at 611) is accomplished by legislative mandate or judicial fiat, "local policy" cannot exclude actions under the statutes of other states except for reasons of cogency; "* * * the room left for the play of conflicting policies is a narrow one". *Broderick* v. *Rosner*, *supra*, 294 U. S. at 642, 643. And here New York "has no real feeling of antagonism" (*Hughes* v. *Fetter*, *supra*, 341 U. S. at 612) against gross receipts taxes; such taxes constitute an established and accepted part of the tax structure of New York's own municipalities. See Appendix C, *infra*, p. App. 8. The suit instituted by petitioner raised no necessity for the court below to choose between the Pennsylvania statute and a competing law of the forum. Nor does the Pennsylvania act impose penal obligations to which legitimate objections could arise on the part of a court sitting in another state. *Milwaukee County* v. *White Co.*, *supra*, 296 U. S. at 271; see *Converse* v. *Hamilton*, 224 U. S. 243, 261.

Especially where, as here, the tax claim arises in such a way that the court in which enforcement is sought need not interpret the revenue law itself or expose itself to the other possible forms of "embarrassment" discussed in *Milwaukee County* v. *White Co.*, *supra*, the Court's statement there that "* * * no state may be said to have a legitimate policy against payment of its neighbor's taxes * * *" (296 U. S. at 277) is apposite. Certainly, the opinion of the court below enunciates no New York policy of

gravity or importance; the court simply objected to the enforcement of tax claims, as distinguished from other liabilities.

And if "the play of conflicting policies" is to be considered (*Broderick* v. *Rosner, supra,* p. 10), the decision of the court below still cannot stand. The public policy of the State of Pennsylvania to permit its municipalities and other taxing authorities to support themselves by levying taxes in a lawful way upon persons who live and carry on business within their boundaries would seem to be far weightier than the Court of Appeals' aversion to tax liabilities. The essentiality of public revenues to the discharge of the functions of government, the heavy reliance by local government upon taxes such as the one here involved, and the ready means of escape and evasion opened by the decision below, all argue strongly for review and reversal.

The prevailing opinion below equates New York's obligations under the Full Faith and Credit Clause with a court's voluntary choices under principles of comity. The court spoke of Pennsylvania's revenue acts in the same vein as those it would use to refer to laws of a foreign country. The court concluded that it was free to indulge its own distaste for a particular kind of claim advanced under a statute of another state. A local policy so lacking in substance "must give way" to more fundamental and significant obligations of New York as a member of the Federal Union. *Hughes* v. *Fetter, supra,* 341 U. S. at 612.

Conclusion

For the foregoing reasons it is respectfully submitted that this Court should issue its writ of certiorari to review the decision below.

Respectfully submitted,

MORTIMER B. WOLF
20 Vesey Street
New York 7, N. Y.

DAVID BERGER
City Solicitor,
City of Philadelphia
703 City Hall Annex
Philadelphia 7, Pa.

Counsel for Petitioner

SHIRLEY FINGERHOOD
Of Counsel

October 1, 1962

APPENDIX A

Constitutional and Statutory Provisions

Article IV, Section 1, of the Constitution of the United States:

> "Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other state. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

28 U. S. C. 1738:

> "* * * Such Acts, records and judicial proceedings * * * shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken."

APPENDIX B

Judgment of the Court of Appeals of the State of New York

COURT OF APPEALS

STATE OF NEW YORK, ss:

PLEAS in the Court of Appeals, held at Court of Appeals Hall in the City of Albany, on the 6th day of July in the year of our Lord one thousand nine hundred and sixty-two, before the Judges of said Court.

WITNESS,

The HON. CHARLES S. DESMOND,
Chief Judge, Presiding.

RAYMOND J. CANNON, Clerk

Remittitur July 6, 1962.

Appendix B

1 No. 140

CITY OF PHILADELPHIA,
Appellant,

vs.

RALPH COHEN,
Respondent.

BE IT REMEMBERED, That on the 31st day of March in the year of our Lord one thousand nine hundred and sixty-two, City of Philadelphia, the appellant—in this cause, came here unto the Court of Appeals, by Mortimer B. Wolf, its attorney—, and filed in the said Court a Notice of Appeal and return thereto from the judgment of the Appellate Division of the Supreme Court in and for the First Judicial Department. And Ralph Cohen, the respondent—in said cause, afterwards appeared in said Court of Appeals by Wolf, Haldenstein, Adler & Freeman, his attorneys.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

WHEREUPON, The said Court of Appeals having heard this cause argued by Mr. Mortimer B. Wolf, of counsel for the appellant—, and by Mr. Lewis J. Mendelson, of counsel for the respondent—, and after due deliberation had thereon, did order and adjudge that the judgment of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is affirmed, with costs.

And it was also further ordered, that the records aforesaid, and the proceedings in this Court be remitted to the Supreme Court of the State of New York, there to be proceeded upon according to law.

THEREFORE, it is considered that the said judgment be affirmed, with costs, as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Supreme Court, before the Justices thereof, &c.

/s/ RAYMOND J. CANNON
Clerk of the Court of Appeals
of the State of New York.

COURT OF APPEALS, CLERK'S OFFICE,
Albany, July 6, 1962

[SEAL]

I HEREBY CERTIFY, that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

/s/ RAYMOND J. CANNON
Clerk.

APPENDIX C

Majority and Dissenting Opinions of the Court of Appeals of the State of New York

STATE OF NEW YORK

COURT OF APPEALS

1 No. 140

CITY OF PHILADELPHIA,
Appellant,

vs.

RALPH COHEN,
Respondent.

DESMOND, Ch. J.:

We have for decision a question not previously answered by this court or, apparently, by any Federal appellate court or State court of last resort: does the Full Faith and Credit requirement of the Federal Constitution (art. IV, § 1) require the courts of a State to entertain an action brought to enforce a defendant's alleged liability, not reduced to judgment, under the tax laws of another State? Both courts below answered "no". Special Term cited *Wayne County* [*Mich.*] v. *American Steel Export Co.* (227 App. Div. 585) which in turn followed *State of Colorado* v. *Harbeck* (232 N. Y. 71) in stating a policy of our State not to enforce the revenue statutes of other States. However, there was in *State of Colorado* v. *Harbeck* no reliance on or

argument from the Full Faith and Credit Clause and the decision went off on questions of comity and public policy.

The Appellate Division majority, affirming Special Term, wrote no opinion but the two justices who dissented discussed the principle or supposed principle that one State will not allow its courts to serve as forums for the collection of another State's taxes, and quoted the dictum from *Marshall* v. *Sherman* (148 N. Y. 9, 25) repeated in *State of Colorado* v. *Harbeck* (232 N. Y. 71, 85, *supra*) that "the revenue laws of one country have no force in another." The dissenters thought that such a rule, if it existed, has no longer any sound basis in public policy and that no right purpose is served by providing immunity for a tax evader who has left his own State for ours. It is certain, however, that there is such a policy pursuant to which our State has barred suits to collect the taxes of other States and that the rule was born of or is related to the idea that the obligation of a tax is "penal in character" (see *Wisconsin* v. *Pelican Ins. Co.*, 127 U. S. 265, 292). This concept of the "penal" character of tax levies was rejected in *Milwaukee County* v. *White Co.* (296 U. S. 268) which classified tax liabilities as being statutory and quasi-contractual in nature, but the *Milwaukee County* case did not answer the question posed by this appeal. The Supreme Court in the *Milwaukee County* case arrived at the definite conclusion that "a judgment is not to be denied full faith and credit in State and Federal courts merely because it is for taxes" (296 U. S., p. 279). Just as it had done in *Moore* v. *Mitchell* (281 U. S. 18, 24) the Supreme Court left undecided whether the Federal Constitution required the courts of one State to enforce non-judgment liabilities under the tax laws of another State. The Supreme Court said that for the purposes of that (*Milwaukee County*) case it would "assume that the courts of one state are not required to entertain a suit to recover taxes levied under the statutes

of another" (296 U. S., p. 275). From all of this it follows that no case law authority controls us as to the "Full Faith and Credit" argument.

The judgment for this defendant was entered on the grant of his motion to dismiss the complaint for lack of jurisdiction of subject matter and for failure to state facts sufficient to constitute a cause of action, so we take as true the allegations of plaintiff's pleading. From 1954 to 1959 defendant lived and conducted a public parking lot in Philadelphia, Pennsylvania. During those years there was in effect in Philadelphia local tax ordinances (Philadelphia Code of General Ordinances, Chapter 9-601, subd. 4, and Chapter 19-1200) which required every person conducting such a parking lot to obtain a license, to file a monthly tax return and to pay each month a tax of 10% on the gross receipts of the parking business. Over a period of several years defendant filed monthly returns and made monthly tax payments to the city but an audit showed (apparently there was no hearing) that his actual gross receipts exceeded the amount reported by him. As a result the City of Philadelphia in December 1958 made an assessment against defendant for a total of about $5,000 covering four past years. Notice of the assessment was mailed to and received by defendant. The Philadelphia ordinance (Code of General Ordinances, Chapter 19-1702) allows the filing by an aggrieved taxpayer within sixty days of a petition for a review of any such determination. Defendant neither petitioned for a review nor paid the additional tax but moved out of Philadelphia and is now residing in Nassau County in this State. Plaintiff has not obtained a judgment against defendant in any State.

The complaint contains a second cause of action in which it is asserted that plaintiff "agreed" to pay this tax but it is clear that this does not allege any special contract but merely that plaintiff in applying for and getting a parking lot license agreed to pay the Philadelphia parking lot tax.

Appendix C

We will assume that the Philadelphia taxing ordinance is authorized by the laws of the State of Pennsylvania (see *City of Philadelphia* v. *Samuels*, 338 Pa. 32), that as such it is a "public act" of that State, that since defendant did not seek review of the assessment in suit his liability therefor has become perfect and complete (see *Philadelphia* v. *Bobman*, 189 Pa. Superior Ct. 72) and that the imposition of gross receipt taxes by a municipality is not repugnant to any public policy of our State. It still remains that no case law anywhere requires the courts of New York to entertain this suit, either by compulsion of "Full Faith and Credit" or pursuant to comity or our own public policy.

So far as comity and New York's policy is concerned all the New York decisions say that our courts will not act as collectors of taxes for another State (*State of Colorado* v. *Harbeck*, 232 N. Y. 71, *supra*; *Matter of Martin*, 255 N. Y. 359; *Wayne County* [*Mich.*] v. *American Steel Export Co.*, 277 App. Div. 595, *supra*; *Wayne County* v. *Foster & Reynolds Co.*, 277 App. Div. 1105; *State of Maryland* v. *Turner*, 75 Misc. 9; *Matter of Bliss*, 121 Misc. 774). The two *Wayne County* holdings expressly rejected the "Full Faith and Credit" argument. The reasons for such an attitude are clear and old. For our tribunals to sit in judgment on a tax controversy between another State and its present or former citizens would be an intrusion into the public affairs of another State (see *Moore* v. *Mitchell*, 30 F. 600, 604, affd. on another ground 281 U. S. 18, *supra*). It is an attribute of our State's sovereignty that it may determine for itself whether under its concepts of comity a particular foreign law should or should not be enforced. New York State has in the past always decided against enforcement of foreign tax laws.

Since the Appellate Division's affirmance of the dismissal of this suit, the Legislature has given us new, strong evidence of our State's public policy as to the use of our courts for such purposes. Previously there was one New

Appendix C

York statute only (Tax Law, § 249-t-2) which touched on the subject and that enactment went only so far as to require an accounting executor or administrator to prove payment of any out-of-State death taxes providing the other State had a reciprocal law. But the 1962 Legislature (L. 1962, ch. 677, eff. April 19, 1962) enacted a new article 25 of the State Tax Law. It authorizes suits in courts of other States to collect taxes due this State or its subdivisions. It directs the courts of this State to "recognize and enforce liabilities for taxes lawfully imposed by any other State or a political subdivision thereof, which extends a like comity to this state" and permits the duly authorized officer of any such State or a political subdivision thereof "to sue for the collection of such a tax in the courts of this state." Twenty-seven other States have, so the New York Tax Commission reports, enacted statutes permitting such suits in their courts on such reciprocal bases. Pennsylvania has not so enacted. This definitive legislative pronouncement, of controlling public policy, in itself and regardless of arguments pro and con, forbids the prosecution of this suit.

The judgment should be affirmed, with costs.

Appendix C

FULD, J. (dissenting):

By this action, the City of Philadelphia seeks to recover parking lot taxes, which the defendant, as a parking lot operator in that city, refused to pay. After an audit of the defendant's books and records, the City made an assessment for taxes due. Since the defendant failed, as the applicable statute provided, to appeal to the City's Tax Review Board, this administrative determination constitutes a binding and conclusive adjudication under Pennsylvania law. (See *Philadelphia* v. *Bobman*, 189 Pa. Super. 72.) Following the determination, but before the City had a chance to have its assessment reduced to judgment, the defendant left the State of Pennsylvania.

I agree that the full faith and credit clause (U. S. Const., art. IV, §1) does not require our courts to entertain a cause of action, based on the taxing statutes of another state, to adjudicate and determine an individual's tax liability under the laws of such other state. (See *Milwaukee County* v. *White Co.*, 296 U. S. 268, 275.) However, I am persuaded that the full faith and credit clause compels the courts of New York to entertain the present action. There can be no doubt that, had the defendant's tax liability been formally translated into a judgment, it would have been entitled to full faith and credit, for, then, the tax cause of action would have been merged in the judgment and its enforcement would not involve "scrutiny of [Philadelphia's] revenue laws or of relations established by those laws with its citizens." (*Milwaukee County* v. *White Co.*, 296 U. S. 268, 276-278, *supra.*) The same rule, it seems to me, must be applied in the case before us, for what is here sued upon is not the underlying tax liability, but a final administrative determination that has, in essence, the same force and effect as a judgment.

The Federal Constitution requires our courts to give full faith and credit "to the public Acts, Records, and ju-

dicial Proceedings of every other State" (U. S. Const., art. IV, §1) and the implementing legislation provides that such acts, records—"nonjudicial" as well as judicial—and judicial proceedings "shall have the same full faith and credit in every court within the United States * * * as they have by law or usage in the courts of such State * * * from which they are taken (28 U. S. C., §§1738, 1739). Whether the administrative determination in the case before us be regarded as a "public Act" or a "Record" within the meaning of the constitutional provision, it is entitled to full faith and credit if arrived at in accordance with due process. (See *Magnolia Petroleum Co.* v. *Hunt*, 320 U. S. 430, 443; *Broderick* v. *Rosner*, 294 U. S. 629, 646-647; *City of New York* v. *Shapiro*, 129 F. Supp. 149, 154; *Hood* v. *Guaranty Trust Co.*, 270 N. Y. 17, 25-26; see, also, Jackson, Full Faith and Credit—The Lawyer's Clause of the Constitution, 45 Col. L. Rev. 1, 15; Abel, Administrative Determinations and Full Faith and Credit, 22 Iowa L. Rev. 461, 485; Note, 69 Harv. L. Rev. 378.) The policy considerations which led the Supreme Court to hold that a judgment for taxes—a judicial proceeding—is entitled to full faith and credit (see *Milwaukee County* v. *White Co.*, 296 U. S. 268, 276-277, *supra*) are equally applicable. (See *City of New York* v. *Shapiro*, 129 F. Supp. 149, 154, *supra*.) We may not look behind the administrative determination to the underlying tax cause of action since it has been merged in the determination, and the fact that our courts would not have entertained the original cause of action is immaterial. (See, *e.g.*, *Milwaukee County* v. *White Co.*, 296 U. S. 268, 277-278, *supra*; *Fauntleroy* v. *Lum*, 210 U. S. 230; *City of New York* v. *Shapiro*, 129 F. Supp. 149, *supra*.)

I would reverse the judgment and deny the motion to dismiss the complaint.

* * * * *

Judgment affirmed, with costs. Opinion by Desmond, Ch.J. All concur except Fuld, J., who dissents in an opinion.

LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
OCT 18 1962
JOHN F. DAVIS, CLERK

(36919)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 477

IN THE MATTER OF THE APPLICATION
of the
CITY OF PHILADELPHIA,
Petitioner,
against
RALPH COHEN,
Respondent.

BRIEF OF THE CITY OF NEW YORK AS *AMICUS CURIAE* IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

LEO A. LARKIN,
Corporation Counsel
of the City of New York,
Attorney for Amicus Curiae.

STANLEY BUCHSBAUM,
MORRIS L. HEATH,
of Counsel.

249 Press of Fremont Payne, Inc., 80 Washington St., N. Y.—BOwling Green 9-8153

SUBJECT INDEX

	PAGE
Statement	1
Interest of the *Amicus Curiae*	1
Facts	2
Pertinent Constitutional and Judicial Code Provisions	3
Argument:	
I—The provision of Article IV, Section 1, of the Constitution requiring each state to give full faith and credit to the "public Acts" of every other state applies to state revenue laws	5
II—Municipal ordinances constitute "public Acts" of a state under the Full Faith and Credit Clause	11
Conclusion	12

Cases Cited

Bradford Electric Co. v. Clapper, 286 U. S. 145 (1932) 6, 7

Broderick v. Rosner, 294 U. S. 629 (1935) 6, 7, 8

City and County of Philadelphia v. Samuels, 338 Pa. 321, 12 A. 2d 79 (1940) 2

City of Philadelphia v. Eglins Garages, 342 Pa. 142, 19 A. 2d 845 (1941) 2

Colorado v. Harbeck, 232 N. Y. 71 (1921) 10

Compania de Tabacos v. Collector, 275 U. S. 87 (1927) 9

Home Tel. & Tel. Co. v. Los Angeles, 227 U. S. 278 (1913) 11

Hughes v. Fetter, 341 U. S. 609 (1951) 5, 7

Huntington v. Attrill, 146 U. S. 657 (1892) 5, 8, 9

PAGE

Jamison v. Texas, 318 U. S. 413 (1943) 12

King Mfg. Co. v. Augusta, 277 U. S. 100 (1928) 12

Milwaukee County v. White Co., 296 U. S. 268 (1935) 2, 5, 9, 10

Moore v. Mitchell, 30 F. 2d 600 (2nd Circ., 1929), aff'd on o.g. 281 U. S. 18 (1930) 10

New Orleans Waterworks Co. v. Louisiana Sugar Co., 125 U. S. 18 (1888) 11

Standard Scale Co. v. Farrell, 249 U. S. 571 (1919) .. 11

State ex rel. Oklahoma v. Rodgers, 238 Mo. App. 1115, 193 S. W. 2d 919 (1946) 9

Wayne Co. (Mich.) v. American Steel Export Co., 277 App. Div. 585 (1st Dept., 1950) 10

Wisconsin v. Pelican Insurance Co., 127 U. S. 265 (1888) 8

UNITED STATES CONSTITUTIONAL PROVISIONS CITED

Article I, § 10, Cl. 1 11

Article IV, § 1 3

Amendment XIV 11

STATUTE CITED

Judicial Code 3, 11

RULE CITED

Supreme Court Rules:

Rule 42, Subd. 4 1

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 477

In the Matter of the Application

of the

CITY OF PHILADELPHIA,

Petitioner,

against

RALPH COHEN,

Respondent.

BRIEF OF THE CITY OF NEW YORK AS *AMICUS CURIAE* IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

This brief is submitted by the City of New York as *amicus curiae*, pursuant to Subdivision 4 of Rule 42 of the Rules of this Court, in support of the petition by the City of Philadelphia for a writ of certiorari.

The City of New York is a political subdivision of the State of New York, and this brief is sponsored by the undersigned, the Corporation Counsel of the City of New York, and the authorized law officer thereof.

Interest of the *Amicus Curiae*

In administering its Sales Tax, General Business and Financial Tax, and other excise taxes, the City of New

York frequently finds that a taxpayer, owing substantial amounts of taxes, has removed to another state. At present the right to proceed against such a tax evader in the other state is clear only if a judgment for the taxes has been first obtained in the taxing jurisdiction [*Milwaukee County* v. *White Co.*, 296 U. S. 268 (1935)], or such other state by comity (either statutory or decisional) permits such suits.

Facts

(1)

The complaint alleges that the defendant is a resident of the State of New York and that, while a resident of Philadelphia, Pa., during the period from October 1954 to March 1959, was engaged in the business of conducting a public parking lot in that City and incurred a liability for the Philadelphia Public Parking Lot Tax (fols. 35-37).

It alleges further that although the defendant filed returns and paid part of such tax during that period, additional tax in the principal amount of $5,057.44 is due from him to the City of Philadelphia (fols. 38-42).

The complaint seeks to recover the aforesaid sum plus interest and penalty thereon (fols. 46-48).

(2)

The Public Parking Lot tax of the City of Philadelphia here in issue has been held by the Pennsylvania Supreme Court to be a valid exercise of the state taxing power by the City of Philadelphia. *City and County of Philadelphia* v. *Samuels*, 338 Pa. 321, 12 A. 2d 79 (1940); *City of Philadelphia* v. *Eglins Garages*, 342 Pa. 142, 19 A. 2d 845 (1941).

Pertinent Constitutional and Judicial Code Provisions

U. S. Constitution:

Article IV, Section 1, of the Federal Constitution provides that:

> "Section 1. Full Faith and Credit shall be given in each State to the Public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

Judicial Code:

The history and development of the congressional act implementing the Full Faith and Credit Clause will be described.

(1)

The Act of May 26, 1790, c. 11, 1 Stat. 122, provides that "the acts of the legislatures of the several states" shall be authenticated by having the respective state seal affixed thereto; and that "the records and judicial proceedings of the courts of any state, shall be proved or admitted in any other court within the United States," by the attestation of the clerk, the seal of the court and a certificate of the judge. It then states:

> "And the said records and judicial proceedings authenticated as aforesaid, shall have such faith and credit given to them in every court within the United States, as they have by law or usage in the courts of the state from whence the said records are or shall be taken."

By Act of March 27, 1804, c. 56, § 2, 2 Stat. 299, the enactment was made applicable to the territories and pos-

sessions of the United States, and, as so amended, subsequently became Section 905 of the Revised Statutes and Section 687 of the Judicial Code (28 U.S.C. § 687).

In the 1948 revision of the Judicial Code (Act of June 25, 1948, c. 646, 62 Stat. 947), Section 687 was renumbered Section 1738 and divided into three separate unnumbered paragraphs (28 U.S.C. § 1738).

The first paragraph provides for the authentication of "Acts of the legislature of any State, Territory or Possession," etc.

The second paragraph provides for proof and admission of the "records and judicial proceedings" of any court of a State, Territory or Possession in other courts.

The third paragraph states:

> "Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken."

(2)

A separate provision relating to non-judicial records or books "kept in any public office", of any State, Territory or Possession of the United States, provides for their authentication and states that they shall be entitled to full faith and credit in every court and office within the United States and its Territories and Possessions. Act of March 27, 1804, c. 56, § 1, 2 Stat. 298; R. S. § 906; 28 U.S.C. § 688; *id.* § 1739.

Argument

I. The provision of Article IV, Section 1, of the Constitution requiring each state to give full faith and credit to

the "public Acts" of every other state applies to state revenue laws.

II. Municipal ordinances constitute "public Acts" of a state under the Full Faith and Credit Clause.

POINT I

The provision of Article IV, Section 1, of the Constitution requiring each state to give full faith and credit to the "public Acts" of every other state applies to state revenue laws.

(1)

In *Milwaukee County* v. *White Co.*, 296 U. S. 268, 275 (1935), this Court expressly left open the question whether the Full Faith and Credit Clause requires one state to enforce the revenue laws of another. *Amicus curiae* here contends that the question should now be decided.

Prior to the revision of the Judicial Code in 1948, there appears to have been some doubt on the part of Congress with regard to whether the Full Faith and Credit Clause was applicable to statutes of a state, since the provision of the Judicial Code implementing the Constitutional Clause only referred to "records and judicial proceedings." *Huntington* v. *Attrill*, 146 U. S. 657, 683-684 (1892); *Hughes* v. *Fetter*, 341 U. S. 609, 613, footnote 16 (1951). In the 1948 revision of the Code, Congress eliminated any such doubt by making the Clause applicable to "Acts, records and judicial proceedings" (*supra*, p. 4). However, even prior to 1948, this Court in a number of decisions had held the Clause applicable to state statutes.

(2)

The modern development of the application of the Full Faith and Credit Clause to state statutes really begins with the decision of Mr. Justice BRANDEIS in *Bradford*

Electric Co. v. *Clapper*, 286 U. S. 145 (1932), a case in which the Vermont workmen's compensation law was held applicable to an action in the New Hampshire courts. The action arose out of an accident in New Hampshire in which an employee of the defendant electric company was killed, where both the plaintiff employee and the defendant electric company were residents of Vermont, and where the Court sustained the company's claim that the Vermont workmen's compensation law must be applied by the New Hampshire court.

The opinion first states that the provision in the Full Faith and Credit Clause referring to "public Acts" of a state applies to statutes (*id.* at pp. 154-155).

It then states that applying the Vermont Act in the case "can not, in any proper sense, be termed an extra-territorial application of that Act" for the reason that it does not prohibit acts "beyond the borders of the State" but affects "only *the rights and liabilities of parties who by their conduct within the State have subjected themselves to its operation* (stress added; *id.*, p. 157 and footnote 7). It said that the Vermont Act had created "a statutory relation between the parties," the incidents of which were subject to regulation in Vermont as long as the relation persisted, and that (*id.*, p. 158):

> "The mere recognition by the courts of one State that parties by their conduct have subjected themselves to certain obligations arising under the law of another State is not to be deemed an extra-territorial application of the law of the State creating the obligation."

In *Broderick* v. *Rosner*, 294 U. S. 629 (1935), this Court again applied the Full Faith and Credit Clause to a state statute. In that case the New York Superintendent of Banks sued in the New Jersey courts to enforce the statutory liability of New Jersey stockholders of an insolvent New York bank.

In sustaining the right of the Superintendent to sue in the New Jersey courts, the Supreme Court described the liability of the stockholders sought to be enforced as a "voluntarily assumed statutory obligation" incurred by the stockholders who, to that extent, had submitted themselves "to the jurisdiction and laws" of the state of incorporation of the bank (*id.*, pp. 644, 645). It then concluded that where a State has had "jurisdiction of the subject matter and the parties, *obligations validly imposed upon them by statute* must, within the limitations above stated, be given full faith and credit by all the other States" (stress added, *id.*, p. 645).

More recently in *Hughes* v. *Fetter*, 341 U. S. 609 (1951), it was held that in an action brought in Wisconsin for damages for death arising out of an automobile accident in Illinois, the Wisconsin courts must give full faith and credit to the Illinois wrongful death statute, despite a provision of the Wisconsin wrongful death statute limiting a right of action only to deaths caused in Wisconsin. The Court stated that the local Wisconsin policy must give way to the "strong unifying principle embodied in the Full Faith and Credit Clause looking toward maximum enforcement in each state of the obligations or rights created or recognized by the statutes of sister states" (p. 612) and that any such exclusion is forbidden by the "national policy" of such Clause (p. 613).

What is the difference between the obligations imposed in *Bradford Electric Co.* v. *Clapper*, *Broderick* v. *Rosner* and *Hughes* v. *Fetter* under the Full Faith and Credit Clause and the obligation sought to be imposed on the present defendant? Here, the defendant just as clearly subjected himself to the operation of the taxing statutes of Pennsylvania as the persons involved in those cases subjected themselves to the statutes given full faith and credit therein.

The demand here, as in those cases, is to recover a money judgment in one state (New York) based on an

obligation incurred by the defendant by his conduct in another state (Pennsylvania), under a statute of that state. Since full faith and credit was required to be given to the statutes in those cases it should be given to the Pennsylvania statute in the present case.

(3)

In *Broderick* v. *Rosner*, 294 U. S. 629 (1935), the Court pointed out that the Full Faith and Credit Clause does not require one state to enforce every right conferred by the statutes of another, although "the room left for the play of conflicting policies is a narrow one" (*id.*, p. 642). One limitation, the Court noted, is that a state need not enforce the penal laws of another state, citing *Huntington* v. *Attrill*, 146 U. S. 657 (1892).

Laws imposing taxes at one time appear to have been considered penal in nature. For example, in *Wisconsin* v. *Pelican Insurance Co.*, 127 U. S. 265 (188), the Court stated that penal laws of one country not enforced by courts of another include not only crimes and misdemeanors but also "pecuniary penalties for any violation of statutes for the protection of its revenue" (*id.*, p. 290).

Subsequently, in *Huntington* v. *Attrill*, 146 U. S. 657 (1892), this portion of the *Pelican* opinion was discussed (146 U. S., at pp. 671-673), after which the Court concluded that " 'criminal laws', that is to say, laws punishing crimes (constitute) the whole class of penal laws which cannot be enforced extra-territorially" (*id.*, pp. 674-675).

The Court then held that the provision of New York law imposing personal liability on corporate officers for debts of the corporation (where they signed false certificates) was in no sense a "criminal or *quasi*-criminal law" or constituted administering "a punishment imposed upon an offender," (*id.*, p. 676), and that a judgment therefor must be given full faith and credit in the courts of Maryland.

The holding in *Huntington* v. *Attrill* limits the concept of penal laws that are unenforcible in another state to those traditionally deemed penal in nature; *i.e.*, criminal laws.

This Court dispelled any doubt about the fact that it deemed tax laws not to be penal in *Milwaukee County* v. *White Co.*, 296 U. S. 268 (1935), where it said that (p. 271):

> "the obligation to pay taxes is not penal. It is a statutory liability, *quasi*-contractual in nature, enforcible, if there is no exclusive statutory remedy, in the civil courts by the common law action of debt or *indebitatus assumpsit*."

Cf. State ex rel. Oklahoma v. *Rodgers*, 238 Mo. App. 1115, 193 S. W. 2d 919 (1946), where the Missouri court, in permitting Oklahoma to sue for taxes as a matter of comity, concluded that tax laws should not be deemed penal because "Tax laws are not passed to punish people" (193 S. W. 2d, at p. 926).

(4)

We have already shown that public acts of a state are entitled to full faith and credit. The cases just discussed establish that tax laws are not regarded as penal laws under the exception to that constitutional mandate. There is no sound ground for creating an additional exception for tax laws. Quite the converse is true. As noted above, one court has said that tax laws are not designed to punish people. In Justice Holmes' trenchant phrase, "Taxes are what we pay for civilized society" [*Compania de Tabacos* v. *Collector*, 275 U. S. 87, 100 (1927)].

Once it has been established that statutes of another state are entitled to full faith and credit, there would appear to be no basis, in the absence of an overriding reason for excepting tax laws from the requirement of full faith and credit, for a court of one state to refuse to enforce a normal tax law enacted by another state or its political subdivision.

(5)

Our research indicates that the question here in issue (whether the Full Faith and Credit Clause requires one state to enforce the revenue laws of another) has never been previously considered by any federal court. In *Milwaukee County* v. *White Co.*, 296 U. S. 268 (1935), at page 274, footnote 3, it is stated that the question was decided in *Moore* v. *Mitchell*, 30 F. 2d 600 (2nd Circ., 1929), aff'd on o.g. 281 U. S. 18 (1930). However, examination of the record and briefs in the *Moore* case reveals that the plaintiff there relied solely on grounds of comity and that full faith and credit was not discussed in the briefs of either side. In dismissing the complaint the Court made no reference to the Full Faith and Credit Clause, holding simply that principles of "private international law" precluded one state from acting as a collector of taxes for another. 30 F. 2d at page 602. Judge Learned Hand, in concurring, made no mention of full faith and credit. He concurred on the ground that the courts in enforcing such taxes would have to inquire into the basis of the liability, with the possibility of passing "upon the provisions for the public order of another state", and thereby embarrassing its neighbor (*id.*, p. 604).

We have also found no state court in which this question has been decided, other than the present case, and a 1950 case in the Appellate Division of the New York Supreme Court, where the complaint was dismissed. *Wayne Co.* (*Mich.*) v. *American Steel Export Co.*, 277 App. Div. 585 (1st Dept.).

Colorado v. *Harbeck*, 232 N. Y. 71 (1921), like *Moore* v. *Mitchell* (*supra*), was decided on the ground that comity did not require the court to entertain a suit for another state's taxes, and all the other cases in which state courts have refused to enforce taxes of another state appear to have been decided on the same ground.

POINT II

Municipal ordinances constitute "public Acts" of a state under the Full Faith and Credit Clause.

The fact that the tax sought to be enforced herein arises under a municipal ordinance rather than under a state statute does not make the Full Faith and Credit Clause any the less applicable, since ordinances are "public Acts" of a state within the meaning of the Full Faith and Credit Clause.

This Court in construing other provisions of the Constitution relating to state action has made it clear that municipal ordinances are deemed state legislation.

Thus, it has held that the provision of the Fourteenth Amendment reading "nor shall any State deprive any person of * * * property, without due process of law," and the provision of the Contract Clause (Art. I, § 10, Cl. 1) that "No State shall * * * pass any * * * Law impairing the Obligation of Contracts," both apply to municipal ordinances. *New Orleans Waterworks Co.* v. *Louisiana Sugar Co.*, 125 U. S. 18, 31 (1888); *Home Tel. & Tel. Co.* v. *Los Angeles*, 227 U. S. 278, 295 (1913); *Standard Scale Co.* v. *Farrell*, 249 U. S. 571, 577 (1919).

In the *Standard Scale Co.* case, the Court held this to be so (249 U. S., at p. 577):

> "For the protection of the Federal Constitution applies, whatever the form in which the legislative power of the State is exerted; that is, whether it be by a constitution, an act of the legislature, or an act of any subordinate instrumentality of the State exercising delegated legislative authority, like an ordinance of a municipality or an order of a commission."

A municipal ordinance is deemed "a statute of any State" within the provision of the Judicial Code giving

this Court jurisdiction to review by appeal judgments of state courts "where is drawn in question the validity of a statute of any State," etc. *King Mfg. Co.* v. *Augusta*, 277 U. S. 100 (1928); *Jamison* v. *Texas*, 318 U. S. 413 (1943).

In the *King Mfg. Co.* case, Mr. Justice BRANDEIS dissenting, concluded that the legislative history of the provision regulating this Court's appellate jurisdiction indicated that such appeals in cases involving ordinances were not intended by Congress. But he expressly recognized that under the Constitution ordinances were deemed to be state legislation, saying that "as the enactments of a subordinate body exercising legislative authority are a part of the laws of a State, an ordinance or an order is a law within the meaning of the contract clause and is state action within the prohibitions of the Fourteenth Amendment" (277 U. S., at p. 126).

CONCLUSION

The petition for a writ of certiorari herein should be granted.

October 17, 1962.

Respectfully submitted,

LEO A. LARKIN,
Corporation Counsel,
Attorney for the City of New York,
Amicus Curiae,
Municipal Building,
New York 7, N. Y.

STANLEY BUCHSBAUM,
MORRIS L. HEATH,
of Counsel.

LIBRARY
SUPREME COURT, U.S.

Office-Supreme Court, U.S.
FILED
OCT 30 1962
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 477

IN THE MATTER OF THE APPLICATION
OF THE
CITY OF PHILADELPHIA,
against *Petitioner,*
RALPH COHEN,
Respondent.

BRIEF OF THE *RESPONDENT* IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

JOHN L. FREEMAN
270 Madison Avenue
New York 16, New York.
Counsel For Respondent.

DONALD M. LANDIS
Of Counsel.

INDEX

	PAGE
Question Presented	1
Reasons For Denying The Writ	2
I—New York's statute on the reciprocal enforcement of out-of-state tax claims renders this litigation devoid of special and important reasons for Supreme Court review	2
II—The judgment below rests on adequate state grounds. New York properly held it need not apply the Full Faith and Credit Clause of the United States Constitution to either the Philadelphia ordinance or the Philadelphia assessment	5
Conclusion	13

Cases Cited

Anglo-American Provision Co. v. *Davis Provision Co.*, 191 U. S. 373 (1903)	12
Bradford Electric Co. v. *Clapper*, 286 U. S. 145 (1932)	7
Broderick v. *Rosner*, 294 U. S. 629 (1935)	7
Carroll v. *Lanza*, 349 U. S. 408 (1955)	10
Chandler's Appeal, 100 Pa. 262 (1882)	9
City of New York v. *Shapiro*, 129 F. Supp. 149 (D. Mass. 1954)	9
Converse v. *Hamilton*, 224 U. S. 243 (1912)	7
Finney v. *Guy*, 189 U. S. 335 (1903)	12
Hamilton County Treasurer (Ind.) v. *Hartzell*, 59 Pa. D. & C. 14 (C.P., 1945)	3
***Hughes* v. *Fetter*,** 341 U. S. 609 (1951)	5, 7, 11
Huntington v. *Attrill*, 146 U. S. 657 (1892)	6

PAGE

King Mfg. Co. v. Augusta, 277 U. S. 100 (1928) 11

Lynde v. Lynde, 181 U. S. 183 (1901) 9

Magnolia Petroleum Co. v. Hunt, 320 U. S. 430 (1943) 7, 10

Milwaukee County v. White Co., 296 U. S. 268 (1935) 2, 10

Moore v. Mitchell, 300 F. 2d 600 (2d Cir. 1929), *aff'd on another gd.*, 281 U. S. 18 (1930) 7

Philadelphia v. Sam Bobman Dept. Store Co., 189 Pa. Sup. 72 (Super. Ct., 1959) 7

Public Service Taxi Co. v. Carter, 54 Lack. Jr. 177 (C.P., 1953) 9

Rice, v. Sioux City Cemetery, et al., 349 U. S. 70 (1955) 3

Ritz Estate, 8 Pa. D. & C. 2d 115 (C.P., 1956) 3

State of Ohio v. Flower, 59 Pa. D. & C. 14 (C.P., 1947) 3

Wells v. Simonds Abrasive Co., 345 U. S. 514 (1953) 7

Wisconsin v. Pelican Insurance Co., 127 U. S. 265 (1888) 6

United States Constitutional Provisions Cited

Article I, §10, Cl. 1 11

Article IV, §1 ..... 1, 5, 7, 10, 11

Amendment XIV 11

Statutes Cited

28 U. S. C. §1257 11

28 U. S. C. §1738 11

PAGE

New York Tax Law § 901-903 ..... 1a

New York City Administrative Code, ch. 46 Tit. 13, § B46-10.0 9

Selective Sales and Use Tax, Sec. 548.2 Pa. Laws 1228 (1959) 3

Uniform Act on Interstate Arbitration of Death Taxes 4

Uniform Act to Secure the Attendance of Witnesses From Without a State in Criminal Proceedings 4

Uniform Reciprocal Enforcement of Support Act 4

Uniform Reciprocal Transfer Tax Act 4

Rule Cited

Supreme Court Rule 19 2

Legislative Memorandum Cited

New York State Department of Taxation and Finance, *Legislative Memorandum:* Reciprocal Enforcement of Tax Liabilities, McKinney's 1962 Session Laws of New York, p. 3572 5

Books and Articles Cited

Leflar, Extra State Enforcement of Penal and Government Claims, 46 Harv. L. Rev. 193 (1932) 12

5 McQuillan, Municipal Corporations (3rd ed., 1949) 11

Paulsen and Sovern, "Public Policy" in The Conflict of Laws, 56 Colum. L. Rev. 969 (1956) 7

Shmukler, Philadelphia Tax Review Board: An Experiment in Municipal Administrative Law, 109 U. Pa. L. Rev. 670 (1961) 9

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 477

In the Matter of the Application
of the
CITY OF PHILADELPHIA,
against
RALPH COHEN,

Petitioner,

Respondent.

BRIEF OF THE *RESPONDENT* IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

Question Presented

Does the Full Faith and Credit Clause of the United States Constitution require New York courts to take jurisdiction of an action to collect a tax assessed under a Philadelphia ordinance, especially in view of a New York statute which presently opens New York courts to the enforcement of foreign revenue laws when the foreign taxing jurisdiction affords New York a like comity?

REASONS FOR DENYING THE WRIT

I

New York's statute on the reciprocal enforcement of out-of-state tax claims renders this litigation devoid of special and important reasons for Supreme Court review.

In view of legislation (N. Y. Tax Law §901-903, Appendix A, infra) enacted in New York after the commencement of this action, this litigation presents no "special and important reasons" for review, as required by Supreme Court Rule 19.

The New York legislation provides that the courts of New York shall

> "recognize and enforce liabilities for taxes lawfully imposed by any other State or a political subdivision thereof which extends a like comity to this state * * *." N. Y. Tax Law §902.

The statute deals in a sensible and conclusive manner with the admittedly significant problem posed by *Milwaukee County* v. *White Co.*, 296 U. S. 268 (1935), where this Court said:

> "* * * we will assume that the Courts of one state are not required to entertain a suit to recover taxes levied under the statutes of another * * *." 296 U. S. at page 275.

The statute opens the courts of New York, which the New York Court of Appeals in its decision below held would otherwise be closed, for the collection of revenues due other jurisdictions, on a simple condition. That con-

dition is only that the taxing jurisdiction permit New York or its political subdivisions to enter the courts of that state for the enforcement of revenue laws.

Pennsylvania is not qualified under the condition since, with one exception, it does not permit its sister states to use its courts for the collection of revenues. *Hamilton County Treasurer* (*Ind.*) v. *Hartzell*, 55 Pa. D. & C. 100 (C.P., 1945); *State of Ohio* v. *Flower*, 59 Pa. D. & C. 14 (C.P., 1947); *Ritz Estate*, 8 Pa. D. & C. 2d 115 (C.P., 1956). Pennsylvania does make an exception for sales taxes and use taxes; and, significantly, Pennsylvania opens its courts to the enforcement of sales taxes and use taxes only on the basis of a statute providing for the reciprocal enforcement of those taxes. Selective Sales and Use Tax, Pa. Laws 1228 Sec. 548.2 (1959) (Appendix B, *infra*). Pennsylvania's failure to meet the condition, however, does not enhance the merits of this case for consideration by this Court.

The fact remains that in light of the New York statute no state or any of its political subdivisions is barred from using the courts of New York for the collection of its revenues except by that state's own action or inaction. Therefore, there are absent from this case the significant issues of public importance, transcending the momentary interests of a litigant, which historically justify granting the writ of certiorari. See *Rice* v. *Sioux City Cemetery, et al.*, 349 U. S. 70 (1955). In the *Rice* case this Court dismissed a previously granted writ of certiorari on the ground that an Iowa statute, enacted after the commencement of that action, which by its very terms was inapplicable to the litigants involved in the case, effectively disposed of the claimed denial of constitutional rights for the future.

There is not the slightest suggestion that dealing with the problem of the enforcement of sister-state revenue laws on the reciprocal basis envisaged in the New York statute will not be thoroughly effective. The technique of reciprocity has been tested, and by its repeated use accepted, by the National Conference of Commissioners on Uniform State Laws. It forms the basis of The Uniform Act on Interstate Arbitration of Death Taxes, The Uniform Reciprocal Enforcement of Support Act, The Uniform Reciprocal Transfer Tax Act and The Uniform Act to Secure the Attendance of Witnesses From Without a State in Criminal Proceedings.

In reliance upon, first, the assumption that their courts are not required against their wills to take jurisdiction of foreign tax claims and, secondly, the acceptability of reciprocity as a method for insuring access to the courts in state tax actions, twenty-seven states besides New York have enacted statutes similar to that of New York.[1]

---

[1] Alabama Code, Tit. 51, §914 (1958); Alaska Laws 1955, ch. 41, §1, p. 106; Arkansas Acts 1951, No. 73, §2, p. 150; California Revenue and Taxation Code §30; Georgia Code Ann. §92-8448 (1961); Hawaii Rev. Laws (1955) §115-31; Indiana Laws 1951, ch. 180; Kansas Laws 1951, ch. 505, §1; Kentucky R.S. §§135, 190 (1950); Louisiana Acts 1950, No. 19, §1; Maine Laws 1949, ch. 131; Maryland Ann. Code, Art. 81, §127 (1957); Michigan C.L. 1948, 609.13; Minnesota Laws 1949, ch. 145; Mississippi Gen. Laws (1954) ch. 234; New Hampshire Laws 1951, 14:1; North Carolina Session Laws 1939, ch. 158, §938; North Dakota Session Laws 1961 ch. 341 §1; Ohio R. C. §5719.081 (1959); Oklahoma Laws 1939, p. 390 §35; Oregon R. S. 305.610 (1961); South Dakota Session Laws 1953 ch. 478; Tennessee Acts 1949, ch. 157 §1; Virginia Code §58.1021.1 (1959); Washington, R. C. 4.24.140 (1957); West Virginia Code ch. 11, Art. 20 §1 (1961); Wisconsin Laws 1947 ch. 409, statutes 1947 §256.47.

Political subdivisions are expressly included within the statutes of Arkansas, California, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, New Hampshire, Tennessee, Virginia and West Virginia.

See, New York State Department of Taxation and Finance: *Legislative Memorandum*, Reciprocal Enforcement of Tax Liabilities (McKinney's 1962 Session Laws of New York, p. 3572). In addition, three other states, of which Pennsylvania is one, have enacted reciprocity statutes relating to particular tax enactments:[2]

This clearly demonstrates the episodic nature of this litigation and that it is well within the competence of the states themselves, generally, and Pennsylvania, in particular, to deal effectively with the problem Pennsylvania has foisted upon itself. Indeed, in view of Pennsylvania's recognition of the reciprocity technique and its choice to limit the jurisdiction of its courts in dealing with foreign revenue laws to the reciprocal enforcement of sales and use taxes only, New York is simply being asked, for the sake of this unique litigation, to be "more Roman than the Romans". See, *Hughes* v. *Fetter*, 341 U. S. 609, 621 (1951) (Frankfurter, J. dissenting opinion).

II

The judgment below rests on adequate state grounds. New York properly held it need not apply the Full Faith and Credit Clause of the United States Constitution to either the Philadelphia ordinance or the Philadelphia assessment.

(a)

In balancing the interests of two states to determine if the Full Faith and Credit Clause must be applied, this Court has at no time enforced a state of vassalage upon a forum where the forum's policy is in conflict with the

[2] Pennsylvania, *supra* (sales and use taxes); Texas RCS ch. 20 Tit. 122 A, Artc. 20.17 (1961) (sales and use taxes); New Jersey Laws of 1962, ch. 70 (income taxes).

statutes of another jurisdiction dealing with that jurisdiction's sovereign powers. On the contrary, this Court has recognized a policy of non-interference when the sovereign functions of one state are called upon for enforcement in another. Thus at one time it was held that a state might not even be called upon to enforce a judgment for taxes obtained in another state. *Wisconsin* v. *Pelican Insurance Co.*, 127 U. S. 265 (1888). The Supreme Court there pointed out that

> "The rule that the courts of no country execute the penal laws of another applies not only to prosecutions and sentences for crimes and misdemeanors, but to all suits in favor of the State for the recovery of pecuniary penalties for any violation of statutes for the protection of its revenue * * *" 127 U. S. at p. 290.

The distinction between the statutes of a state dealing with its sovereign functions and its statutes dealing essentially with the rights of private individuals explains this Court's holding in *Huntington* v. *Attrill*, 146 U. S. 657 (1892). This Court there held that a New York law imposing personal liability on corporate officers for debts of the corporation could be enforced in the courts of Maryland, against the defendant's claim that the statute was penal in nature. The Court stated:

> "The test whether a law is penal, in the strict and primary sense, is whether the wrong sought to be redressed is a wrong to the public or a wrong to the individual. * * *" 146 U. S. at p. 668.
>
> "The question whether a statute of one State, which in some aspects may be called penal, is a penal law in the international sense, so that it cannot be enforced in the courts of another State, depends upon the question whether its purpose is to punish an offense against the public justice of the State,

> or to afford a private remedy to a person injured by the wrongful act. * * *" 146 U. S. at pp. 673-674.

This distinction for purposes of the Full Faith and Credit Clause between a foreign state's statutes dealing with essentially private rights and liabilities and a foreign state's statutes relating to the state's sovereign powers makes inapposite *Converse* v. *Hamilton*, 224 U. S. 243 (1912); *Broderick* v. *Rosner*, 294 U. S. 629 (1935); *Bradford Electric Co.* v. *Clapper*, 286 U. S. 145 (1932); *Hughes* v. *Fetter, supra;* and *Magnolia Petroleum Co.* v. *Hunt*, 320 U. S. 430 (1943) cited by Appellant and *Amici Curiae*. *Broderick* v. *Rosner* and *Converse* v. *Hamilton* involved liabilities of a commercial nature sought to be enforced for the benefit of private individuals, namely, individual creditors. *Bradford Electric Co.* v. *Clapper*, *Hughes* v. *Fetter* and *Magnolia Petroleum Co.* v. *Hunt*, involved recoveries sought under workmen's compensation statutes which, similarly, are essentially private in nature.

Respondent by no means claims that the holdings in those cases were erroneous; that no statutes of one state are entitled to full faith and credit in another. He does maintain that statutes relating to a state's sovereign functions do not invoke the operation of the Full Faith and Credit Clause and that the Full Faith and Credit Clause should not be used to force a change in well-established conflict of laws rules. See, *Wells* v. *Simonds Abrasive Co.*, 345 U. S. 514, 518 (1953); Paulsen & Sovern, *"Public Policy" in the Conflict of Laws*, 56 Colum. L. Rev. 969, 1014 (1956).

(b)

Judge Learned Hand in *Moore* v. *Mitchell*, 300 F. 2d. 600 (2d Cir. 1929), *affirmed on another ground*, 281 U. S. 18 (1930), explained the wisdom in not requiring the

courts of one state to sit in judgment on the revenue laws of another state against its will, as follows:

> "To pass upon the provisions for the public order of another state is, or at any rate should be, beyond the powers of a court; it involves the relations between the states themselves, with which courts are incompetent to deal, and which are entrusted to other authorities. It may commit the domestic state to a position which would seriously embarrass its neighbor. Revenue laws fall within the same reasoning; they affect a state in matters as vital to its existence as its criminal laws. No court ought to undertake an inquiry which it cannot prosecute without determining whether those laws are consonant with its own notions of what is proper". 30 F. 2d. at p. 604.

The good sense in adhering to this policy is amply demonstrated in this case. Here scrutiny must be made of the Pennsylvania revenue laws and the relations between Pennsylvania and its citizens. For example, notwithstanding the assumption by the New York Court of Appeals in its decision below that Respondent's liability for the Philadelphia tax is "perfect and complete", the courts of New York would necessarily have to decide the issue of the perfection and completeness of that liability, if any, in the event they were forced to take jurisdiction of this case.

Philadelphia v. *Sam Bobman Dept. Store Co.*, 189 Pa. Sup. 72 (Super. Ct., 1959) is not dispositive of those issues since that case merely held that the *amount* of the taxpayer's liability was not open to further question in the courts of Pennsylvania in view of the taxpayer's failure to appeal the assessment made against him to the Philadelphia Tax Review Board. There remains unanswered the precise limits of the *res judicata*, or estoppel, effect of a taxpayer's failure to petition the Philadelphia Tax

Review Board for a review of an assessment made against him, and, of course, full faith and credit need, in any event, be given only to the extent that a judgment is *res judicata*. *Lynde* v. *Lynde*, 181 U. S. 183 (1901).

Indeed, it appears probable that despite the asserted finality of the Philadelphia assessment, the issue of Respondent's liability for the tax would not be *res judicata* in the Pennsylvania courts. The present Solicitor of Philadelphia has stated that the Tax Review Board could not bind the Philadelphia Department of Collection (Shmukler, *Philadelphia Tax Review Board: An Experiment in Municipal Administrative Law*, 109 U. Pa. L. Rev. 670, 688 & n. 83 (1961)); and in the absence of mutuality in the binding effect of a prior determination, Pennsylvania has held that *res judicata* will not be granted to the determination. *Chandler's Appeal*, 100 Pa. 262 (1882); *Public Service Taxi Co.* v. *Carter*, 54 Lack. Jr., 177 (C.P., 1953). The very possibility that a New York Court might conclude in this regard otherwise than Pennsylvania, emphasizes the earnest obedience to be given Judge Hand's dictum to avoid committing a state to a decision which could seriously embarrass its neighbor.

Judge Wyzanski's decision in *City of New York* v. *Shapiro*, 129 F. Supp. 143 (D. Mass. 1954) is not contrary. In that case the New York tax enactments gave the New York administrative determination the status of an independent obligation. New York City Administrative Code, Ch. 46, Tit. B, §B46-10.0 provided New York City with the power to proceed upon an unpaid assessment "with like effect as that provided by law in respect to executions against property upon judgments of a court of record".

Here, to the contrary, the Philadelphia statute does not provide for the enforcement of the tax assessment, but requires that an independent action, looking to a final

judgment, be brought with respect to the assessment. In other words, an assessment which requires for its enforcement a conclusive judgment can not itself be a conclusive judgment. Hence, the considerations of the *Milwaukee County* case, *supra*, are not present. There, the Court based its holding that full faith and credit must be given to a judgment for taxes on the grounds that:

> "In a suit upon a money judgment for a civil cause of action the validity of the claim upon which it was founded is not open to inquiry, whatever its genesis. Regardless of the nature of the right which gave rise to it, the judgment is an obligation to pay money in the nature of a debt upon a specialty. * * *" 296 U. S. at p. 275.

A comparison of *Magnolia Petroleum Co.* v. *Hunt*, *supra*, with *Carroll* v. *Lanza*, 349 U. S. 408 (1955) points up the significance of the absence of a final adjudication when one is envisioned in the state's procedure. In the *Carroll* case this Court held that the Full Faith and Credit Clause does not preclude the state in which an injury occurred from awarding the injured employee damages in a common law action despite the fact that he was receiving payments under the law of the state where his employment contract was made and whose statutes provided that the rights and remedies granted by it shall exclude all other rights and remedies at common law or otherwise. This Court said:

> "There (Magnolia *v.* Hunt) the employee having received a *final award* for compensation in the forum of the injury returned to his home state and sued to recover under its Compensation Act. We held that the latter suit was precluded by the Full Faith and Credit Clause. But here there was no final award under the Missouri Act. Under that Act the statutory payments apparently start auto-

matically on receipt of notice of the injury. . . . While provision is made for an adjudication of disputes between an employee and his employer no adjudication was sought or obtained here." 349 U. S. at pp. 410-411.

(c)

There is little that could more disparage the "strong unifying principle embodied in the Full Faith and Credit Clause" (*Hughes* v. *Fetter, supra*, at p. 612) than extending its applicability to municipal ordinances. One can imagine what disruptive fragmentation could result from forcing upon the fifty states, against their wills, the policies of the country's thousands of municipalities.

No case has required one state to give full faith and credit to the municipal ordinances of another state. Indeed, the plain language of 28 U.S.C. 1738, which implements the Full Faith and Credit Clause, provides that the acts to which full faith and credit are to be given are "The Acts of the legislature of any State, Territory or Possession . . ." 28 U.S.C. 1738. (Appendix C, infra).

The holdings of this Court that municipal ordinances constitute state action under the 14th Amendment, the Contract Clause of the United States Constitution and 28 U.S.C. §1257 rest on entirely different considerations from those involved in the Full Faith and Credit Clause. Clearly, constitutional rights are not to be denied, whether by municipal action or by state action, but municipal ordinances cannot be equated with statutes for all purposes. See, Brandeis, J., dissenting opinion, in *King Mfg. Co.* v. *Augusta*, 277 U. S. 100, 115 (1928).

A municipal ordinance which conflicts with the statutes or public policy of the state of which the municipality is a part would be invalid. 5 McQuillan, Municipal Cor-

porations, 100 §15.21 (3rd ed. 1949). Thus an ordinance should not prevail over the policy of another state.

(d)

The question whether New York should permit the Philadelphia action to be maintained in its courts rests exclusively on the principle of comity, which is a question exclusively for the courts of New York to decide. *Finney v. Guy*, 189 U. S. 335 (1903); See, *Anglo-American Provision Co. v. Davis Provision Co.*, 191 U. S. 373 (1903), applying the doctrine of forum non conveniens.

Leflar in *Extra State Enforcement of Penal and Governmental Claims*, 46 Harv. L. Rev. 193 (1932) points out that arguments for the enforcement of foreign revenue laws which may be applicable elsewhere do not apply with equal force in New York.

> "Occasional statements implying that a state allowing foreign tax collecting suits would soon find itself in the role of full-time tax collector for its neighbors contain an element of truth with respect to one state at least. That state is New York. Practically every judicial report of attempted extra-territorial collection of taxes in the United States has come from the state and Federal Courts of New York. This fact emphasizes the seriousness of the problem of tax evasion by the removal of property across a state boundary, as well as the inconvenience to New York courts of entertaining foreign tax suits. New York is a natural place to which to send securities and valuable property generally, whether innocently, or for the express purpose of tax evasion. The burden on New York courts and the New York taxpayers paying for the Courts would become considerable if tax collecting suits by other states were freely allowed there." 46 Harv. L. Rev. at pp. 218-219.

These considerations necessitate leaving to the states themselves the determination of to what extent and under what circumstances their courts will be open to foreign tax claims.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari herein should be denied.

Respectfully submitted,

JOHN L. FREEMAN
270 Madison Avenue
New York 16, N. Y.

Counsel For Respondent.

DONALD M. LANDIS
Of Counsel.

October 29, 1962

APPENDIX A

NEW YORK TAX LAW

ARTICLE 25

RECIPROCAL ENFORCEMENT OF TAX LIABILITIES

§ 901. Collection of taxes by suits in other states

At the request of the tax commission the attorney-general may bring suit, in the name of this state, in the appropriate court of any other state to collect any tax legally due this state, and any political subdivision of this state or the appropriate officer thereof, acting in its behalf, may bring suit in the appropriate court of any other state to collect any tax legally due to such political subdivision.

§ 902. Enforcement of taxes imposed by other states

The courts of this state shall recognize and enforce liabilities for taxes lawfully imposed by any other state, or any political subdivision thereof, which extends a like comity to this state, and the duly authorized officer of any such state or a political subdivision thereof may sue for the collection of such a tax in the courts of this state. A certificate by the secretary of state of such other state that an officer suing for the collection of such a tax is duly authorized to collect the same shall be conclusive proof of such authority.

§ 903. Interest and penalties

For the purposes of this article, the words "tax" and "taxes" shall include interest and penalties due under any

taxing statute, and liability for such interest or penalties or both, due under a taxing statute of another state or a political subdivision thereof, shall be recognized and enforced by the courts of this state to the same extent that the laws of such other state permit the enforcement, in its courts of liability for such interest or penalties or both, due under a taxing statute of this state or a political subdivision thereof.

APPENDIX B

Selective Sales and Use Tax
Sec. 5482, Pa. Laws 1228 (1959)

The courts of this Commonwealth shall recognize and enforce liabilities for sales and use taxes lawfully imposed by any other state, provided that such other state extends a like comity to this Commonwealth.

APPENDIX C

28 U.S.C. §1738

The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.

The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if the seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in very court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.